

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1741 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 YES; 2 to 5 : NO

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AJAJHUSAIN @ AJJA ABDUL

Versus

COMMISSIONER OF POLICE

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Appearance

MR JS RATHOD for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/06/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 28th August, 1998 made by the

Commissioner of Police, Ahmedabad City under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The grounds of detention suggest that the petitioner is an habitual offender and he habitually commits offences punishable under Sec. 379 IPC and under Secs. 392 and 194 IPC and in respect of such activities of the petitioner, three offences have been registered against him in Odhav Police Station. In one of the offences petitioner is alleged to have stolen a scooter and in rest of the two offences, the petitioner is alleged to have stolen gold chain. Besides, it is alleged that petitioner is alleged to have asked residents of the city to watch the stolen goods and when refused, is alleged to have picked up quarrel with such witnesses. The said witnesses have expressed their fear of the petitioner and have refused to give statements against the petitioner unless they were ensured of obscurity. One of the witnesses has stated that petitioner had approached him to sell a gold chain and had demanded Rs. 6,000/= as the sale price. On the witness refusing to purchase the said gold chain, the petitioner was enraged and dragged him to the public road and hit him. He also wielded knife against the crowd gathered there. The people being afraid of him ran helter skelter scattered and left the spot. The second witness stated that the petitioner approached him to purchase the gold chain of Rs. 5,000/= and upon refusal, he started dragging the witness to the public road and thrashed him. He wielded knife against the crowd that had gathered there and pursued the crowd with open knife. In the third incident, the concerned witness stated that on 9th August, 1998, on witness having refused to watch the scooter, the petitioner started hitting him and wielded open knife to the crowd gathered there. All the aforesaid three incidents are alleged to have been committed in the business locality during the day time.

4. Mr. Rathod, the learned advocate for the petitioner has challenged the order of detention on the grounds : (a) that the activities alleged to have been pursued by the petitioner, even if were to be believed, would be a problem of maintenance of law and order. The incidents narrated by the witnesses relate to individuals and cannot amount to breach of public order; (b) the detaining authority has not considered the factum of petitioner having been released on bail; (c) during the period from 14th August, 1998 and 24th August, 1998, the

petitioner was remanded to the police custody. However, the third of the offences is alleged to have been committed on 15th August, 1998. It must, therefore, be believed that all the offences have been got up against the petitioner. The detaining authority has, therefore, failed to apply its mind and the order of detention is vitiated for non-application of mind. Upon perusal of the papers, I find that the third of the offences registered against the petitioner i.e., CR No. 321 of 1998 on 15th August, 1998 is in respect of the offence committed on 31st July, 1998, the contention that the complaint has been got up during the said period, therefore, requires to be rejected. Mr. Rathod is right in contending that the three offences registered against the petitioner is against individuals and it cannot amount to breach of public order. However, the quick succession in which the said offences are committed in the same area coupled with the three incidents narrated by the concerned witnesses cumulatively would, in my opinion, amount to breach of public order. The three incidents narrated by the witnesses have all been alleged to have been committed in the broad day light during the business hours, in the thickly populated business locality. Further, all the three witnesses were dragged to the public road and were beaten and the crowd was persuaded with open knife. The petitioner's activities of keeping lethal weapon and using the same for creating terror would certainly amount to breach of public order. The Commissioner was alive to the fact that the petitioner was arrested in respect of the offence registered against him and was released on bail. Besides, the Commissioner of Police has personally recorded his satisfaction in respect of the genuineness of the statements made by the witnesses and the apprehension voiced by them. In above view of the matter, the order of preventive detention made against the petitioner is wholly justified.

5. The petition is, therefore, dismissed. Rule is discharged.

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Prakash\*